

The issue regarding whether respondent is an agricultural pursuit was not presented to the Administrative Law Judge at the time of the preliminary hearing. Although some evidence was presented in the record, the Administrative Law Judge was neither asked to decide nor did in fact rule upon the issue. As K.S.A. 1997 Supp. 44-555c limits the review

of the Appeals Board to questions of law and fact as presented and decided before the Administrative Law Judge, the Appeals Board will not consider this issue at this time.

Claimant is currently alleging three separate dates of accident while employed with respondent. The first, a low back injury, is alleged to have occurred in February 1997 when claimant was lifting a portion of a bowling alley lane. Claimant acknowledges he did not tell respondent of this accident. In addition, Mr. Michael Gigot, the owner of respondent business, and Mr. David Farris, the foreman for respondent, denied being advised by claimant of this injury until several months after the alleged incident. Claimant also acknowledged that he advised Mr. Gigot of a back injury suffered at home, over a weekend in February 1997, while moving furniture. Claimant later changed his testimony, alleging he only told Mr. Gigot of the furniture story to avoid claiming a work-related injury, which he feared would lead to his termination.

A review of medical records fails to uncover any medical treatment provided to claimant during January or February 1997. In considering the lack of medical evidence supporting claimant's position, the contradictory testimony from respondent, as well as claimant's admission that he did not tell respondent of this incident for several months, the Appeals Board finds claimant has failed to prove accidental injury arising out of and in the course of his employment in either January or February 1997.

The next date of injury alleged by claimant is June 23, 1997. This injury occurred when claimant fell off a baler injuring his back. At the preliminary hearing, respondent stipulated that this injury arose out of and in the course of claimant's employment with respondent, and that he had been notified of the injury in a timely fashion.

Claimant received substantial medical treatment after this injury with both Steve C. Worden, D.C., and orthopedic surgeon Michael J. Baughman, M.D. Prior to this injury, claimant was working 50 to 60 hours per week on a regular basis. After the June injury, claimant's hours were reduced to between 20 and 30 hours per week on a regular basis. In addition, respondent accommodated claimant by eliminating any need for him to do any lifting, bending, or stooping. All claimant was required to do after the June incident was ride the baler which was described as having a cushioned seat, resulting in very little jarring.

Claimant's third injury is a series beginning after the fall in June 1997 and continuing through his last day of work, September 12, 1997. Claimant alleges a series of microtraumas resulting from the baling work. However, there is no medical evidence in the record to support claimant's contention that his light duty work on the baler for the last three months of his employment in some way aggravated or worsened his condition. In addition, the job description from respondent's representative indicates a very light duty job with practically no physical labor involved. It was also disclosed that claimant worked for Donnie and Ken Johnson, running a front-end loader the nights of September 16, 17, and 18, 1997. The front end loader was described as involving much more bumping and jarring

than did the baler. The Appeals Board finds no support for claimant's contention that he suffered additional injury after June 23, 1997, while on light duty.

As the parties had stipulated to the compensability of the June 23, 1997, accident, for the Administrative Law Judge to have denied temporary total disability compensation and medical treatment from that date of accident would require the Administrative Law Judge to have found no support for either claimant's request for medical treatment or jurisdiction to order temporary total disability compensation. The Appeals Board does not rule on issues dealing with temporary total disability compensation or medical treatment on appeal from preliminary hearings as those are not jurisdictional issues as listed in K.S.A. 1997 Supp. 44-534a. Therefore, the Appeals Board finds the Order of Administrative Law Judge Kenneth S. Johnson dated February 18, 1998, should remain in full force and effect.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Kenneth S. Johnson dated February 18, 1998, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of April 1998.

BOARD MEMBER

c: Robert A. Levy, Garden City, KS
James M. McVay, Great Bend, KS
Administrative Law Judge, Garden City, KS
Philip S. Harness, Director